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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 994.

BETTY JEANNE STEARNS and HOWARD LAVELLE SUTTON,
Petitioners,

vs.

THE HERTZ CORPORATION, a Corporation,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Respondent, The Hertz Corporation, a corporation, respectfully requests this Honorable Court to deny the Petition for Writ of Certiorari to the United States Court

of Appeals for the Eighth Circuit in the above case. In this behalf, Respondent shows unto the Court the following:

Respondent, in accordance with the Rules of this Court (Revised Rules of the Supreme Court of the United States, Rules 24 (1) and 40 (3)), accept as correct petitioners' reference to the official reports of the opinions delivered by the District Court and Court of Appeals below; the statement of grounds on which jurisdiction of this Court is invoked; the Statute involved; the question presented for review; and Petitioners' Statement of the Case, including the basis for federal jurisdiction in the Court of first instance.

ARGUMENT.

Petitioners advance as the reason for granting of the Writ of Certiorari that the Court of Appeals has decided an important state question in conflict with the applicable state law. No decisions of the Appellate Courts of Illinois are cited in support of Petitioners' contention regarding proper interpretation of the statute involved. Both the District Court and the Court of Appeals gave careful consideration to Petitioners' argument that 1947 Laws of Illinois, 1238, Section 42e, prohibited a passenger exclusion clause in insurance required to be provided by car rental agencies. The language of the District Court rejecting this argument may be found at R. pp. 201-202. The Court of Appeals affirmed the District Court, stating in its opinion cited at pages 10 and 11 of the Petition for Writ of Certiorari, as follows:

> "The plaintiffs call to our attention here the fact that the proviso clause of sub-section (1) was added to the statute by an amendment in 1947. It is then argued that this was a deliberate and separate change; that, despite the exclusion of coverage for occupants under the primary clause of sub-section (1) and under sub-section (2), the statute must now mean what it says, namely, that insurance as to any person must be provided; and that the 1947 amendment thus extended the coverage to, specifically, injuries for which the renter was liable but which the injured party could not collect.
>
> We do not agree. We may accept the plaintiff's premise that a motor vehicle responsibility statute usually represents the public policy of a state and points to a liberal interpretation of insurance requirements and coverages. **New York Cas. Co. v. Lewellen**, 184 F. 2d 891, 894 (8 Cir. 1950); **Chatfield v. Farm**

Bureau Mut. Auto. Ins. Co., 208 F. 2d 250, 256 (4 Cir. 1953); see **Illinois ex rel. Terry v. Fisher**, 12 Ill. 2d 231, 145 N. E. 2d 588, 592 (1957). But the reasons mentioned by Judge Harper for his conclusions as to this defective statute, contrary to the plaintiffs' contentions, are inescapable, viz., (a) that a statute's proviso clause is generally restrictive and not extending, **Anderson v. City of Park Ridge**, 396 Ill. 235, 72 N. E. 2d 210, 218-19 (1947); **Illinois Chiropractic Soc'y v. Giello**, 18 Ill. 2d 206, 164 N. E. 2d 47, 51 (1960); (b) that it would be illogical if sub-section (1) were to require that judgments be satisfied within thirty days except those involving an injury to a passenger; and (c) that sub-section (2) relating to the alternate liability bond clearly excludes passenger coverage and it would make no sense to conclude that sub-section (1) relating to liability insurance requires broader protection. "Courts are bound to presume that absurd consequences were not contemplated by the legislature * * *." **Board of Education v. Brittin**, 11 Ill. 2d 411, 143 N. E. 2d 555, 557 (1957); **Illinois Chiropractic Society v. Giello**, supra, p. 51 of 164 N. E. 2d. Further, it seems obvious to us that this proviso, with its reference to Section 42-11, was concerned only with amounts of coverage; the words which the 1947 amendment replaced were themselves concerned only with coverage limits."

So also, petitioners' corollary proposition that the rental contract in this instance must be interpreted in the light of the broad coverage afforded by the Illinois Safety Responsibility Law is not supported by the applicable state law. The Court of Appeals at pages 11 and 12 of the petition for Writ of Certiorari, stated:

"Next, we do not interpret the statute's references to Section 42-11 (now succeeded by Section 7-317,

Ch. 95½, Smith-Hurd Illinois Annotated Statutes) as imposing the omnibus coverage requirements of the Illinois Safety Responsibility Law upon Hertz's rental agreements. The plaintiffs' apparent suggestion to the contrary is answered by **Gabler v. Continental Cas. Co.**, 295 S.W. 2d 194 (Mo. App. 1956), the holding in which was approved in **State Farm Mut. Auto. Ins. Co. v. Ward**, 340 S.W. 2d 635, 638 (Mo. Sup. 1960). Although **Gabler** was decided by a Missouri court, the accident in controversy occurred in Illinois. The car rental policy had a passenger exclusion. The Illinois, as well as the Missouri law was reviewed. The court held that the Illinois Safety Responsibility Law was not applicable because the rental contract was executed prior to the accident; that the parties were free to contract for insurance which excluded liability to a passenger; and that the exclusion was plain, unambiguous, and enforceable. Interestingly enough, the court noted, footnote 1, p. 196 of 295 S.W. 2d, the exclusion of passenger liability in the Illinois car rental insurance statute. This approach is entirely consistent with the Illinois decisions. **McCann v. Continental Cas. Co.**, 6 Ill. App. 2d 527, 128 N.E. 2d 624, 626-27 (1955), aff'd 8 Ill. 2d 476, 134 N.E. 2d 302 (1956); **Pohlman v. Universal Mut. Cas. Co.**, 12 Ill. App. 2d 153, 138 N.E. 2d 848, 850; **Stollery Bros. v. Inter-Insurance Exchange**, 15 Ill. App. 2d 479, 145 N.E. 2d 768, 770-71 (1957); **Porterfield v. Truck Ins. Exchange**, 28 Ill. App. 2d 195, 171 N.E. 2d 108, 110 (1960)."

In this state of the record, Petitioners are seeking to have this Court rule for the third time on a question of construction of local law. This Court has held on numerous occasions that an interpretation of state law made in the first instance by the District Court and affirmed by the Court of Appeals will be accepted by the Supreme

Court. Propper v. Clark, 69 S. Ct. 1333, 337 U. S. 472, 93 L. Ed. 1480, rehearing denied 70 S. Ct. 33, 338 U. S. 841, 94 L. Ed. 514, rehearing denied 72 S. Ct. 289, 342 U. S. 907, 96 L. Ed. 679; General Box Company v. United States, 76 S. Ct. 728, 351 U. S. 159, 100 L. Ed. 1055, rehearing denied 76 S. Ct. 1044, 351 U. S. 990, 100 L. Ed. 1502; Sims v. United States, 79 S. Ct. 641, 359 U. S. 108, 3 L. Ed. 2667; Appalachian Power Company v. American Institute of Certified Public Accountants, 80 S. Ct. 6, 4 L. Ed. (2) 30.

In Propper v. Clark (supra) this Court stated:

> "The precise issue of state law involved, i. e., whether the temporary receiver under Sec. 977-b of the New York Civil Practice Act is vested with title by virtue of his appointment, is one which has not been decided by the New York Courts. Both the District Court and the Court of Appeals faced this question and answered it in the negative. In dealing with issues of state law that enter into judgments of federal courts, we are hesitant to override decisions by federal courts skilled in the laws of particular states unless their conclusions are shown to be unreasonable."

Petitioners seek to avoid this salutary principle by contending that it is of importance to the people of the State of Illinois and to the people of the United States generally "that the question be settled as to whether or not passengers in automobiles rented are to be covered by liability insurance". Insofar as the question presented for review in the petition for Writ of Certiorari relates to the alleged conflict between an automobile rental agreement entered into in the State of Illinois, and a section of the Illinois Statutes, it is obvious that whatever determination is made, will have no effect upon people generally throughout the United States. There is nothing in

the record to suggest that any other state has a statute regulating car rental insurance comparable to 1947 Laws of the State of Illinois, 1238, Section 42e.

Even with regard to the people of the State of Illinois, the Court of Appeals points out in its opinion that if the driver of the rented vehicle owned an automobile and carried a standard owner's policy, coverage would have been afforded (Petition for Writ of Certiorari, page 15). There is nothing in the record which would supply the Court with information regarding the number of persons utilizing rental vehicles who come within this category. Absent such information the Court would be required to engage in speculation to determine whether any special or important reasons are present which would warrant review on Writ of Certiorari. The fact that review on certiorari may be of importance to Petitioners is not a consideration which will call for exercise of the Court's judicial discretion under Rule 19 of the Revised Rules of the Supreme Court. This Court has stated that it will not grant the Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. **Rice v. Sioux City Memorial Park Cemetery**, 75 S. Ct. 614, 349 U. S. 70, 99 L. Ed. 897. The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing. **Magnum Import Co. v. Coty**, 43 S. Ct. 531, 262 U. S. 159, 67 L. Ed. 922. Petitioners have already received Appellate review of their case, and even if it could be demonstrated that the decision below was erroneous, it is not the function of the Writ of Certiorari to correct such error. Address of Mr. Chief Justice Vinson before the American Bar Association Sept. 7, 1949, 69 Sup. Ct. V, VI.

CONCLUSION.

It is respectfully submitted that since the question presented for review is one of local or state law, which was carefully and fully considered by the District Court and affirmed by the Court of Appeals, and it further appearing that no special or important reasons for review within the intendment of Rule 19, Revised Rules of the Supreme Court, are present, this petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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